STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**03/23/06**	Bill No:	**AB 3075**
Tax:	**Property Taxes**	Author:	**Assembly Revenue and Taxation Committee**
Related Bills:			

BILL SUMMARY

This bill contains **California Assessors' Association-sponsored provisions** related to the property tax, which would do the following:

- Expressly provide that certain change in ownership provisions related to manufactured homes located on leased land will be similarly applied to floating homes located on leased land (berths). *§61 and 62*
- Allow base year value transfers to be granted on a prospective basis if a claim is filed after the designated filing period. *§69.5*
- Delete extraneous language related to the period of time to respond to an assessor's request to file an application for disaster relief. *§170*

Change in Ownership:
Floating Homes
Revenue and Taxation Code Sections 61 and 62

Current Law

Under existing property tax law, real property is reassessed to its current fair market value when there is a "change in ownership." (Article XIIIA, Sec. 2; Revenue and Taxation Code Sections 60 - 69.7)

The law provides special change in ownership provisions for property subject to long term leases. Generally, when property is subject to a lease, in tracking whether a change in ownership occurs, the "owner" of the property is considered to be either the lessee or the lessor depending upon the term of the lease. This is done to identify the "primary owner" of the property, so that only a transfer of that person's interest in the real property will be a change in ownership.

Generally, in lease transactions, the lessee is treated as the "owner" of property subject to a lease with a remaining term (including renewal options) of 35 years or more. Thus when the lease term is for 35 or more years, the lessee's interest is tracked for change in ownership purposes rather than the actual owner of the property. The interest in property for a 35 year term is considered to be equivalent in value to fee ownership. The rationale behind the 35-year "dividing line" is that long term leases (35 years or more) are "substantially equivalent in value to the fee interest" per Section 60, while in cases of leases that are less than 35 years, the value equivalent to the fee interest is retained by the lessor. Thus, when the lease term is for 35 or more years, the lessee's interest is tracked for change in ownership purposes rather than the actual owner of the property.

Generally, with respect to property that is leased, a “change in ownership” occurs

- upon the creation of a leasehold interest in taxable property for a term of 35 years or more (including renewal options);
- upon the termination of a leasehold interest in taxable real property which had an original term of 35 years or more (including renewal options);
- upon the transfer of a leasehold interest having a remaining term of 35 years or more, including renewal options; or
- upon any transfer of a lessor’s interest in taxable real property subject to a lease with a remaining term (including renewal options) of less than 35 years.

There are some single family residential housing developments in California where homes are located on leased land (i.e., the house is owned but the land upon which the house was built is leased). To address this special type of situation, existing law conclusively presumes that all homes eligible for the homeowners’ exemption, other than manufactured homes, that are on leased land are under a lease that has a renewal option of at least 35 years, whether or not in fact that renewal option exists in any contract or agreement. In practical application, these laws mean that whenever such a property is sold then both the land and the home (classified as an “improvement”) will be reassessed to its current market value. And if the land is ever sold, then neither the land nor the home would be reassessed. In these situations, the property tax assessment for both the land and the home is billed as a single assessment to the homeowner.

Manufactured homes located on leased land are treated differently. They are specifically excluded from the long term lease conclusive presumption. Separate assessments are prepared for the manufactured home owner and for the land owner. When a manufactured home changes ownership, only the manufactured home itself is reassessed – not the land underneath it. In addition, the sales price of the manufactured home may not necessarily be the assessed value of the property if site value is reflected in the sales price. The assessed value may often be less than the sales price when “site value” is present (the manufactured home sells for a higher price because of its location within the park). For manufactured homes, there are separate assessments, with the manufactured homeowner paying taxes on the manufactured home and the landowner paying taxes on the land.

Existing law is silent as to specific change in ownership provisions for floating homes. In practice, assessors treat floating homes similarly to manufactured homes. When a floating home sells, only the floating home itself is reassessed not the underlying berth. And, the assessed value of the floating home may be less than the sales price paid for the home if it includes berth right values. The floating homeowner pays taxes only for the home and the berth owner pays taxes for the land.

Proposed Law

This bill would expressly provide in law that floating homes, which are located on leased land (berths), will be treated similarly as manufactured homes with respect to the long term lease conclusive presumption. This reflects current administrative practices.

Comments

1. **Purpose.** To codify in law existing administrative practices.
2. **What is a Floating Home?** A "Floating Home" is a legally-permitted structure, with no means of self-propulsion, which occupies a permanent berth. (See Revenue and Taxation Code Section 229) It complies with all applicable codes and is connected to all utilities and services, including water, sewage, electricity, gas, telephone, and cable television. Floating home marinas are privately owned and charge homeowners monthly berth fees.

Prospective Base Year Transfers:
Late Filed Claims for Propositions 60/90/110
Revenue and Taxation Code Section 69.5

Current Law

Relevant to this bill, voters have approved three constitutional amendments permitting a person to “transfer” his or her Proposition 13 base year value from one residence to another. A “base year value transfer” allows eligible homeowners to preserve the Proposition 13 protected value of their prior residence by transferring it to the new residence. This essentially allows a homeowner who qualifies to continue to pay the same basic amount of property taxes. Without this provision, the property taxes on the new residence would be based on its current fair market value, which is usually the sales price, because of the change in ownership.

- Proposition 60, approved by the voters on November 6, 1986, amended Section 2 of Article XIII A of the California Constitution to allow persons over the age of 55 to sell a principal place of residence and transfer its base year value to a replacement principal place of residence within the same county.
- Proposition 90, approved by the voters on November 8, 1988, extended these provisions to a replacement residence located in another county under limited conditions.
- Proposition 110, approved by the voters on June 5, 1990, extended these provisions to severely and permanently disabled persons of any age.

Section 69.5 provides the statutory implementation for Propositions 60, 90 and 110. It details the provisions by which persons over the age of 55 years and disabled persons may transfer, subject to many conditions and limitations, the base year value of their primary residence to a replacement residence that is purchased or newly constructed. This property tax relief is generally allowed only once in a lifetime.

Relevant to this bill, to receive the base year value transfer, Section 69.5 requires the taxpayer to file a claim form with the assessor within three years of the date the replacement residence is purchased or new construction is completed.

Proposed Law

This bill would amend Section 69.5 to allow the assessor to grant, on a prospective basis, a base year value transfer with respect to property to which a transfer of base year value was available, but for which a timely claim was not filed.

For transfers of base year value that were not timely claimed, the effective date of the base year value transfer would be the lien date of the assessment year in which the claim is filed. For example, any late filed claim in 2007 would be first effective for the January 1, 2007 lien date which in turn is associated with the 2007-08 fiscal year tax bill.

There will be no refund or cancellation of taxes that accrued prior to the prospective application of the base year value transfer.

For any claim that was not timely filed prior to January 1, 2007, the claimant may refile a claim with the assessor.

In General

Property Tax System. California's system of property taxation under Article XIII A of the California Constitution (Proposition 13) values property at its 1975 fair market value, with annual increases limited to the inflation rate, as measured by the California Consumer Price Index, or 2%, whichever is less, until the property changes ownership or is newly constructed. At the time of the ownership change or new construction, the value of the property for property tax purposes is redetermined based on current market value. The value initially established, or redetermined where appropriate, is referred to as the "base year value." Thereafter, the base year value is subject to annual increases for inflation. This value is referred to as the "factored base year value."

Comments

1. **Purpose.** To ensure that taxpayers are not permanently barred from receiving a constitutionally authorized benefit due to a statutory requirement.
2. **Prospective Application.** If a claim is made after the customary three year filing period, then the base year value transfer will be granted on the date commencing with the lien date of the assessment year the claim form is filed (i.e., property tax refunds are not issued for past years, but future property tax bills will reflect the lower assessed value).
3. **Statutory Requirement.** Base year value transfers were authorized via constitutional amendment by the voters of California (i.e., Propositions 60, 90, and 110). The three year period to file a claim is a statutory requirement and no such requirement exists in the Constitution.
4. **The parent-child change in ownership exclusion has allowed prospective relief since 1998.** Allowing prospective relief is consistent with the direction the Legislature took with the parent-child exclusion in 1997 (SB 542, Ch. 941). This was also a Board sponsored provision stemming from a Taxpayers' Rights Advocate recommendation.
5. **Impact on Transfers Occurring Previous to this Measure.** This bill would apply to all transfers that occurred since the effective date of the respective base year value provisions (i.e., Proposition 60, 90, or 110). Thus, persons previously denied the base year value transfer due to a late filed claim (or who never filed) may refile a claim and receive the transfer on a prospective basis.

Disaster Relief
Assessor Prompted Notification to File
Revenue and Taxation Code Section 170

Current Law

Under existing law, property taxes may be reduced following a disaster, misfortune, or calamity in those counties where the board of supervisors has adopted an ordinance authorizing the disaster relief provisions of Section 170 of the Revenue and Taxation Code. These provisions apply to both disasters affecting many properties, such as a flood, and individual properties, such as a home fire.

Disaster relief is provided by allowing the county assessor, under specified conditions, to reassess the property as of the date of the disaster to recognize the loss in a property's market value. The prior assessed value of the damaged property is reduced in proportion to the loss in market value; the new reduced value is used to calculate a pro-rata reduction in taxes. The affected property retains its lower value, with reduced taxes, until it is restored, repaired, or reconstructed.

In some counties, the property owner must "apply" i.e., file a claim form before the assessor can reassess the property. In other counties, the assessor can initiate the reassessment process without any claim being filed. In these counties, the board of supervisors has adopted an ordinance granting the assessor this authority.

Section 170(a) provides broad authority for the assessor to initiate reassessments without the owner filing a claim. It provides the ordinance may specify that "the assessor may initiate the reassessment" without the property owner filing a claim if the assessor determines that within the preceding 12 months the property was damaged or destroyed. And Section 170 (l) similarly allows the assessor to initiate the reassessment without the property owner filing a claim but on a more limited case by case basis.

In counties where a taxpayer must first file a claim, it must be filed within the time frame specified in the local county's ordinance or within 12 months of the disaster, whichever is later. However, relevant to this bill, prior to 2001, some property owners only had 60 days after the disaster to file a claim. But if property owner did not independently file a claim within the required former 60 day period, a second opportunity to file a claim was provided. Specifically, if the assessor mailed a claim to the property owner, it restarted a new filing period and gave the owner an additional 60 days to file. However, the additional 60 day period could not extend beyond 12 months after the date of the disaster.

Proposed Law

This bill would amend subdivision (d)(1) of Section 170 to delete the reference to the 60 day period. Because a taxpayer now has 12 months to file a claim, the reference to the 60 period no longer fits within the context of the other provisions of Section 170 and should be deleted.

Regardless of the circumstance, (i.e., assessor mails claim to prompt the taxpayer to file or the taxpayer independently files a claim) any taxpayer would have 12 months after the date of the damage or disaster to file a claim if one is required.

Comments

Purpose. A housekeeping measure to correct a sentence that is no longer logical in context with the remainder of the section provisions.

COST ESTIMATE

Enactment of this measure would not materially impact the Board’s administrative costs.

REVENUE ESTIMATE

The change in ownership provisions for floating homes reflect the current administrative practice and thus have no revenue impact. *§§61 and 62*

The revenue loss association with allowing prospective base year value transfers is estimated to be $100,000 per year. *§69.5*

The disaster relief provisions have no revenue impact. *§170*

Analysis prepared by:	Rose Marie Kinnee	916-445-6777	05/4/06
Contact:	Margaret S. Shedd	916-322-2376	

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